Medical Evidence and the Laws Relating to Compensation for Injury.

BY

R. J. COLLIE, M.D., J.P.,

Medical Examiner to the London County Council and the Metropolitan Water Board; Home Office Medical Referee.

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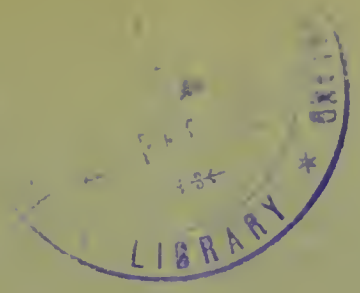
APPENDIX.



MEDICAL EVIDENCE AND THE LAWS RELATING TO COMPENSATION FOR INJURY.

(Read by Request before the Stratford Branch of the British Medical Association.)

By R. J. COLLIE, M.D., J.P.,

Medical Examiner to the London County Council and the Metropolitan Water Board.
Home Office Medical Referee.

Gentlemen,—You have honoured me by asking me to address the Stratford Branch of the British Medical Association, and I am conscious of the compliment, and now return my thanks for giving me an opportunity of addressing you on a subject in which I am so deeply interested.

My subject is "Medical Evidence and the Laws relating to Compensation for Injury." I propose to divide it into three sections. In the first place I shall deal with the medical man as examiner and as witness. Next, the duties of medical referees in relation to the law as affecting compensation claims shall be considered; and, lastly, an endeavour will be made to give you as succinctly as possible a digest of the laws relating to compensation for injuries.

I.—THE MEDICAL MAN AS EXAMINER.

The first duty of a medical man, when called upon to examine in a case of claim for compensation for injury, is to assure himself on the question of *imposture*. Now the ability to stop a deliberate scheme of imposture depends very largely upon the personality of the examiner. A timid man will miss many points; moreover, he makes a bad witness.

The examiner must be prepared almost daily to risk his professional reputation, and have the moral courage to accept much personal responsibility. He must be bold, yet cautious, and you will realise the necessity for this caution when I tell you that during the

last year alone I have been threatened with legal proceedings on three occasions as a direct result of the attitude I found it necessary to adopt in the course of my work.

To practise successfully detective medicine, as it might fairly be called, one is almost bound to add to one's methods a certain mystery, to wear a mask, so that the object of the inquiry may be disguised. It is wise at times to appear credulous, in order to throw the malingerer off the scent: a judicious suggestion will often induce him to overact. Watch for inconsistencies, but never show incredulity, for that is fatal. Your manner should be impassive and your countenance expressionless.

Twenty years ago nervous breakdown, *i.e.*, a lack of inhibition of the nervous system, was scarcely recognised; at any rate, it was too little recognised. Now we have gone to the other extreme.

An exaggerated humanitarianism encourages dishonest claims, and leads to gross exaggeration of symptoms. Let me illustrate what I mean:

A short time ago a man came to me with a wound on his arm literally the size of a split pea. On it were one or two pieces of lint half a foot wide and the full length of an ordinary roller bandage. He was an employee, and I certified him fit for duty, and stated in my report that he probably had been so for several weeks. A short time after a solicitor sent me a letter, which he had received from the plaintiff's doctor, in which it was stated that whether the man was now fit for work or not was a matter of opinion, but my statement that he had been fit for duty for several weeks was libellous. I declined to withdraw anything that had been said, and suggested that if the doctor considered himself libelled he knew his remedy. Nine months later this case was actually brought on for trial. We won the case, and gave the doctor a very bad time in the witness-box, but think what all this meant to the plaintiff!

I met the doctor afterwards in another case, and there was no fight left in him. He seemed to regret the whole incident, and somewhat pathetically told me that he had never received his fees, and that his patient was ruined as a result of the action.

When an accident happens, especially if the injury sustained is a fracture, dislocation, or strain, it is a wise proceeding in all cases to give, with some assurance, the approximate date of the patient's recovery. The date, of course, may be subject to revision later: It is useful as a "suggestion" in a therapeutic sense. The malingerer, or he who is deliberately exaggerating, never knows when he will be well. He gives you no ground for hope of his recovery on any particular date, and leaves you to get such comfort as you can from

such expressions as "I will go back to work when I am well," or "I do not know when I shall be well."

I am always shy of people who, when asked the nature of their injury, say "Shock to the nervous system." They have generally been discussing the question of damages with a lawyer.

Genuine depression of the nervous system following a serious accident, as distinct from the shock of the Law Courts, is not difficult to recognise, and can scarcely be mistaken. You have the facial expression, which is almost impossible to assume, with its peculiar loss of play of expression, and frequent fibrillar muscular tremors of the face muscles. The pallor of true shock is unmistakable, especially when associated with the mask-like look of the face. The whole appearance is one of plaintive settled sadness. The pupils often show an alteration, being either contracted or dilated; the eyeballs occasionally oscillate; the reflexes are lost, or exaggerated, and the hands tremble when held out.

If the subject of an accident throws his self-control to the winds, and deliberately exaggerates all his symptoms, believing that the worse he becomes the higher will be the scale of damages, I fail to see why defendants should have to pay damages measured by the success of the plaintiff's capacity for practising auto-suggestion. No station in life is exempt from the tendency to exaggerate when an action for personal damages is pending. The unearned increment supplies the motive.

A story is told of a Scotch solicitor who, whilst defending a claimant caught in some petty act of larceny, was at great trouble to prove to the judge that his client was suffering from a disease known as kleptomania. "Quite right," said the judge, "it *is* a disease, and I sit here to cure it. Six months."

Quite lately I sent back to work two malingerers who had been seen by eleven doctors during a period of 791 days! They had extracted during that time the sum of £337 10s. In another case, where the claimant demanded £1,300 damages, the modest sum of £200 was accepted.

In Germany suspected malingerers are compelled to enter a hospital for the purpose of observation, and I hope this method will one day be adopted in this country.

It is a painful admission, but there is now in practice in London a considerable number of medical men, mostly middle-aged, who, discontented with general practice, have sold their souls to the devil, and lay themselves out to appear when called upon by the "running-down solicitor." They are always ready to make out a case, generally a plausible case, for any litigant who invokes the aid of the law. One

of these men told me that the usual terms were, "No damages, no fee, but the lost fee could be tacked on to the next case!" The arrangement is a dishonest one, and is calculated to corrupt the litigant, generally a working man.

Twenty-six years ago I was asked by a solicitor to see a child who had an injury of a trifling nature. My instructions were that if the injuries were severe, the damages to follow would be large, and my fee would correspond. Here was a deliberate attempt to induce the medical witness to deceive himself to defeat the ends of justice, and to be the instrument of unjustly abstracting money from the defendant. If the doctor succumbs, he corrupts his patient and degrades himself.

In 1908 I examined and reported on no less than seven hundred accidents. Four hundred of these were medico-legal cases, mostly threatened actions at common law. If you saw one hundredth part of the moral degradation which actions for damages bring upon the working classes, you would not blame me for speaking strongly. I do not blame the working man for his share in these compacts, at any rate I blame him very little. He is often under-paid when at work, he is too often out of work, his home circumstances are not what they should be, and we, his betters, are not altogether irresponsible in the matter. He is often dull, and has frequently a perverted mental outlook. Socialism run riot has dimmed his vision to everything but the hard and unlovely in his environment. He meets with an accident, frequently the result of his own carelessness. He suffers pain. He is thrown out of work, and half wages, when paid, means hunger to those he loves. Then comes the tempter. The purchase of a ticket at the cost of a penny entitles him to free legal advice! I hear complaints of under-selling in our profession, but could anything be lower than this? Delay to the man of law means letter writing, and letter writing means fees. What matter if the client be starving at home? *We* know a claimant of this type is very likely, under these circumstances, consciously or unconsciously, to exaggerate.

Several times working men have appealed to me *ad misericordiam*, saying in effect that whilst the lawyer fights they starve. Woe betide you if, while conducting a medico-legal examination, you even suggest that the plaintiff agree with his adversary by the way! Interference of this sort between a client and his solicitor will evoke a protest from the man of law which, if you are a timid man, will make you tremble.

Not long ago I examined for the defence a working man who, at his solicitor's advice, had embarked on an action at law. He had had

an injury, but had recovered. He complained that he was starving, and that his wife, whom I could hear coughing upstairs, was dying of consumption. On my insisting that he was now fit for work, he asked me if I could get him his old employment. I hinted that he might cut the Gordian knot by simply going back to work on his own account. This, however, did not suit the solicitor, and I had to answer for my sins.

The other day Judge Parry said: "There are many things conspiring against working men after an accident getting back to their work. First of all, there was the Act of Parliament which really gave no assistance. Then they were surrounded by lawyers and doctors, who naturally took a one-sided view of the case, having to see that their clients were protected, and that they did not get back to work too soon. Again, the workman's fellow workmen had not the least desire that he should go back amongst them. It was becoming a very serious medical problem to tackle. What was to be done with men whom expert doctors knew to be quite fit to get back to work if they could make an effort? In the case before him the workman might have been in a sound condition for work months ago if he had really had proper opportunities in every sense."

Three years ago I examined for the defendants a girl of about 17 years of age. She broke a small bone in her ring-finger, and at once put the matter into the hands of a solicitor. She was kept out of work for ten months.

We must never forget that the mental perturbation and worry added to the suspense involved in litigation, coupled as it always is with harassing medical examinations, is bound to make a serious mental impression upon a plaintiff of neurotic temperament. What wonder if it modify his sense of honour. The serious aspect of the matter to my mind is, that when damages have been wrung out of the defendant, and the lawyers and doctors paid, there is just the danger that his better ego, his self-respect and moral tone, may not be reinstated, or at least may not reach the same level as before his litigation.

Occasionally we come across cases of litigants who have had more than one accident, and whose perverted moral sense has, to my thinking, been largely due to actions at law.

Always examine a medico-legal case with the most punctilious care. Let no one hustle you. Do not consider anything unimportant. Remember the searchlight of the witness-box is a powerful one, and that a clever cross-examining counsel can score heavily by a very little slip.

In examining a case with another doctor be perfectly frank, and,

if possible, try to get some sort of definite agreement, but on no account discuss the matter either before the claimant or his solicitor. Beware of the man who says, "Come, now, let us have all the cards on the table," whilst you know perfectly well he has a few up his sleeve. You will find, however, as a rule, no difficulty in arriving at some common basis if two honest men are consulting. If you see your opponent is biassed, prejudiced, or a violent partisan, the less you say the less you will give away.

Recently a lawyer sent me a case of a lad aged nine who played the *rôle* of plaintiff better than many an adult. (I was for the defendant.) The statement of claim set out that the lad had been permanently disfigured by the loss of a front tooth, namely, his second upper incisor. The lad's mouth was evidently normal, and I asked his doctor, who was present, to demonstrate the space left by the missing tooth. Behold! the space was also gone. What had fallen out at the time of the accident was the milk tooth; and by the time of my visit it had, of course, been replaced by the permanent one! I reported that the permanent disfigurement was of no consequence, except for the purpose of cross-examination of the plaintiff's doctor. Imagine, if you can, what he would have suffered at the hands of a clever cross-examining counsel!

It is safe, until the contrary is proved, to assume that the plaintiff is often untruthful. A young member of our profession lodged a claim for damages for injury which he alleged incapacitated him from duty. A solicitor asked me to examine him, giving me the address of a hotel in London. I telephoned to make an appointment, but was told that the doctor was away for a few days. On asking for his address in the country, I was given the name of a street in an outlying suburb. Suspecting that our young friend might be acting as *locum tenens* whilst waiting for damages, I had the addresses of all the doctors in the district looked up in the *Medical Directory* and found he was spending his few days with one of them, whom we shall call Dr. X. I next called and asked to see Dr. X. He was, as I expected, ill, but I was told that his *locum tenens* would be pleased to see me on his return from his round of professional visits. The "*locum*" was, of course, the plaintiff. The case ended satisfactorily.

Spinal Injury.

A working man confided to a medical friend of mine that he had been advised by his mate, on presenting himself for medical examination, as follows: "When yer get hirt, tell 'em it's yer back—the doctors can't never get round yer back!"

Now it is not true that we cannot detect malingering when pain

is referred to the dorsal region, but it is true that the difficulty is increased when this particular region is chosen. The diagnosis is really not so difficult as it appears. Watch the claimant when he is dressing and undressing. Always ask a male plaintiff to undress, you invariably learn something from it. Engage him in conversation, interest him in, say, the details of how the accident happened. Enquire sympathetically whether he was treated by the defendant's servants with proper respect and courtesy at the time of the accident. It is really no business of yours, and it does not matter one jot what was said, as far as you are concerned, but a claimant attaches immense importance to the exact words and expressions of witnesses at the time of the accident. The details connected with the accident direct the patient's thoughts from his anatomy, and generally from the *rôle* he is about to play. Nothing I know relaxes joints, and bends backs, which are otherwise rigid, as readily as a tender enquiry about the conduct of the defendant's servants at the moment of the accident.

My experience is that if a claim happens to be made at common law, the back almost certainly suffers. If it is made under the Workmen's Compensation Act, the patient specialises less frequently in the back, whereas in accidents occurring to employees of large municipal bodies, where the men have learned to expect impartial and just treatment, allegation of an injured back is almost unknown.

The actions at common law which I see are mostly the result of tram-car accidents, and one is aware that in a certain proportion of these there are reasons for the occasional incidence of this symptom, *i.e.*, pain in the back. The fact remains that the spinal region is the happy hunting ground of the recipient of a slight shock, who deliberately exaggerates, and of the dishonest malingerer who knows the difficulty most men have with injuries of this region.

Pain in the region of the back is an invariable symptom of the so-called "traumatic neurasthenic," who has had his disease manufactured for him by the indiscreet and thoughtless suggestions of some weak-kneed medical practitioner. Most, but not all, cases of neurasthenia are conceived in the mercenary mind of the plaintiff, are born during an injudicious medical examination by questions so often asked which suggest symptoms, and develop rapidly to a full maturity under the influence of some rascally attorney's clerk who has not a soul above fees—fees which are at the same time the measure of his own meanness and the price of his client's self-respect.

Quite recently I met in consultation a man whom I knew well enough to ask why he had recently given two or three certificates of sickness to a working man who was obviously well. His frank statement of the case from his point of view was as follows:—"I do

give these certificates when asked by members of working men's sick clubs, for if I refuse they go to bed, put on a plaster, and send for one of my medical neighbours, who may be relied upon to give a certificate. Later I am called to task by the secretary of the club for refusing to certify members when they are, as they allege, ill." "I do not," he said, "defend it on moral grounds, but these are the circumstances under which I have to work." Surely an ignoble mental attitude, and yet how common it is, and how difficult it makes my work!

This method of dealing with the working-man is not always in his best interests, as the following example shows:—

Two of the largest corporations in London follow the example of the Home Office in the treatment of the Metropolitan Police, and send all employees who have been on the sick list twenty-eight days for medical examination and report.

One of these was sent to me recently with a view to examination and report. He had been absent from duty for more than twenty-eight days. As he looked the picture of health, I at once suggested that he was now well and fit for work. He agreed to this, and I reported accordingly. He admitted that he belonged to two sick clubs. The allowances from these, added to that of the Corporation, amounted to considerably more per week than he was earning when at work. I thought no more of it, for these cases are common enough, when to my surprise I heard some months afterwards that he had refused to commence work, and had in consequence been suspended. It appears he produced three certificates from three different medical men, all stating that he was unfit for work. It was suggested to me the matter might after a few months be dropped, but I insisted upon the case being thoroughly investigated, with the result that the man was dismissed and forfeited a pension.

Lately there has been very little trouble from this district of London.

I sometimes send back to duty forthwith cases of trifling complaints by an exaggerated sympathy. A tender enquiry, for instance, as to whether an ambulance wagon and a nurse were requisitioned to bring to my house some old soldier, who has shamelessly put himself on the sick list for a microscopic injury, has a most stimulating effect. A pointed reference to the sufferings of our troops in the recent campaign in South Africa, followed by an effusive sympathy, makes protest impossible, and the subtle scorn implied brings the interview and the illness to a speedy end.

Of course, we medical men know that, apart from these trivial cases, the nervous system does, in fact, very frequently suffer seriously from shock after accidents, and that this lasts sometimes many weeks and

even months. That traumatic neurasthenia does exist it would be foolish to deny, although I have heard its very existence jeered at both by judge and counsel even in the High Court. The judges are, however, beginning to recognise traumatic neurasthenia. I notice that Judge Hudson-Berry, at the Manchester County Court, said the other day: "This man is worrying himself into a neurasthenic condition, and will never be better till he returns to work." Do not forget that this condition even in its most aggravated form is more a question of psychology than physiology and surgery. It is not a disorganising disease. It used to be described as irritable weakness. The mental impressions are out of all proportion to their cause. Patients do not, or cannot, resist pain.

The difficulty of alleged pain in the back is that it does not necessarily mean malingering. We know now that pain in the back after an accident, be it caused by a wealthy railway company, or by an accident in one's own back garden, is, much more often than not, accompanied by no serious pathological changes. The pain is mostly, if not wholly, psychic. The study of psycho-therapeutics is, indeed, a fascinating one. If you have clear views on the subject state them shortly, dogmatically, cryptically, but decline to discuss theories.

I hold that because a man is injured he is not justified in giving way to every whim and fancy that the "tyranny of his organisation" suggests to him. I think no one has a right to magnify every sensation, normal or abnormal, to school himself deliberately by introspection, to become self-centred, and to barter away his pluck for problematical damages, merely because he thinks someone else will have to pay.

Not very long ago a man was sent to me by a solicitor. He said he had been in an accident, which he described. He complained of the usual spinal symptoms, which, he said, were accompanied by giddiness. All were subjective, and, of course, he was incapable of work. I satisfied myself that he was a malingerer. Whilst I was on the point of showing him out, the solicitor rang me up by telephone, and asked me whether Mr. Y. had called on me. I told him I had just completed the examination. He asked me to describe Mr. Y. I said he was a little, thick-set, ugly, pugilistic-looking individual. "Why," he said, "that is not the man." I detained him whilst the solicitor sent up a detective who knew the real plaintiff, and by a subterfuge I brought them together. He was an impostor, and had the audacity to personate another man for the purpose of medical examination. We did our best to encourage the litigation, and the case was actually set down for trial at the High Court, but the solicitors settled it.

Another case I saw recently comes to mind. It was one of these troublesome backs, and was said to be strained. Whilst under examination the man was obviously watching me. Alleging that he could not stoop, he asked me to pick up his clothes, which I had intentionally made him put on the floor. I took no notice and left the room. On returning, in certainly not more than half a minute, he had them all gathered up and put on a chair. As he declined to resume work I had an interview with his doctor, who frankly admitted that his patient was a rank impostor, and that the year before, imposing on two sick clubs, he had feigned illness for three months. Indeed, it appears that he had accurately described to his doctor my methods of examination.

On another occasion, whilst examining a claimant in a solicitor's office, I let my pencil fall intentionally, and the patient nimbly picked it up. Later, when examining his back, I asked him to stoop, and he said it was impossible. I thought I had scored, and took a note of it. He was duly cross-examined upon the incident, but he said he had no recollection of it!

Working men are fully alive to the value of evidence. A man in the course of his duty, whilst struggling with two drunken men, became very breathless. A loud, musical, purring note could be heard even by a bystander, coming from the neighbourhood of the heart. There was a distinct thrill over the aortic and mitral valves, with a loud regurgitant bruit transmitted along the sternum. There was little doubt that he had ruptured one of his semi-lunar valves. The case is, of course, extremely rare, and he soon learned this, in the hospital to which he was sent. When he had apparently recovered he was sent to me for examination and report, he handed me a full copy of the house-surgeon's notes which he had somewhat slily transcribed whilst in the hospital, saying "one can never tell how a case of this sort might end." He meant of course that the note might be useful evidence in a law court.

Tenderness

is another symptom which is nearly always complained of. Its presence or otherwise can often be settled by applying pressure on the alleged painful spot, and pressing also at the same time on another part of the spine, say in the cervical region. The attention being taken off the alleged painful spot, not infrequently considerable pressure can be applied unnoticed. Sometimes it is useful to get the claimant exactly to localise the exact tender spot. Mark it—it is generally on his back. Now direct his attention elsewhere, and later, come back to the neighbourhood of the alleged tender area, fix on a spot

at some distance well over two inches from that marked, and if he will but *now* say that this latter is the *only* tender spot, your trouble will not be in vain. Remember the ability to localise tactile sensation varies in different parts of the body. The two points of a compass give the sensation of one only, when one and a half inches apart in the sacral region, and even when two inches apart at the back of the neck near the occipnt, and in the upper dorsal and mid-lumber regions; whilst in the mid-dorsal region two pricks, two and a half inches apart give the impression of one only.

Full allowance for these physiological peculiarities must always be made when applying this test.

The following test has been of much value to me in many cases, and always produces a strong impression on a jury. The ineffectual efforts of opposing counsel to minimise its significance are very amusing. A somewhat noisy Faradic coil is set in motion. *(The lecturer described the test.)*

I do not tell the result to the plaintiff, but wait until I am in the witness-box and tell the jury.

Learned counsel never say die. The only serious attempt to diminish the value of this test was once made in the High Court. My evidence had been taken late in the afternoon, and I noticed that counsel did not cross-examine me on the battery. Next morning a medical witness for the defence was put into the box and swore that he had no doubt that the tingling left by my first application lingered, and was mistaken by the claimant on the occasion of the second application of the electrodes, notwithstanding the fact the current at the time was non-existent! Of course the jury did not believe evidence of this sort, and, later, they stopped the case.

Stiff Joints.

Alleged stiff backs, immovable joints, and assumed lumbago which apparently cause much pain, are often relaxed and made delightfully mobile by the simple and humane expedient of sympathetically accepting their existence verbally. At a later stage of the examination, when the patient is undressing and dressing, he himself often unconsciously demonstrates their non-existence.

The other day I proved to a house-surgeon that a dear old lady (whom he had condemned to wear a back splint for an alleged stiff knee-joint for many weeks) was an impostor by removing the splint and directing her to take off her boot! Whilst I eagerly plied her with questions she removed the unoffending boot in the usual way, *i.e.*, she crossed her legs and bent her knee.

A friend of mine told me that many years ago (when he was

house-surgeon in the Middlesex Hospital) a lad of about 15 was brought into the hospital who had had contraction of his ham-strings for two years. He sat in bed all day, and slept all night with his knees drawn up and was unable to straighten them. On several occasions he was given an anæsthetic, and the joints at once relaxed, but immediately contracted again on his recovering consciousness. At four o'clock one morning my friend was urgently summoned to see the patient who occupied the bed next to the boy's. He had been seized by an acute attack of mania, and was wildly gesticulating with a knife. Two or three nurses were sitting on his chest, and others engaged in attempting to secure the knife. Another patient was in an epileptic fit from sheer fright, and the boy with the useless knee joints had suddenly jumped out of bed and run downstairs! The interesting point is that the boy was made to live up to it and was cured.

It is often difficult to prove a man will not, when he can, raise his arms to a higher level than a right angle from the body. The genuine malingerer may, however, be exposed in the following way. *(The lecturer described his method.)* Do not tell him: if he is a malingerer, he is unscrupulous and will be ready for you. Information of this sort always impresses a judge, and often the jury.

Medical men often point out a certain creaking produced in the knee-joint by a little fold of the synovial membrane. Some suggest erosion of the articular surfaces, and so forth. I used to argue with these gentlemen. Now I do not. I simply put their hands on my own knee, move the joint, and let them feel exactly the same creaking. A workman, who complained bitterly of pain in his knee, and whose symptoms seemed a little like those of a displaced semilunar cartilage, was easily caught out by the following simple manœuvre. *(Method described.)* Had there been any slipped cartilage this movement was bound to have produced pain at the knee joint, but as it was done from the ankle he did not notice it. He was a determined malingerer, but was eventually sent back to work at the point of the bayonet.

Syncopal Attacks

are often spoken of by patients as "fits." They are fits, but fainting fits. Feigned fits often come when suggested. I remember, many years ago, being attracted whilst at Herne Hill Station by loud sounds and wailing. On looking round I saw a man on the opposite side of the platform violently convulsed. Several porters were holding him. Upon my approach the fits continued, but when I explained that I was a medical man, and advised the bystanders to leave him, the fits

at once ceased, and he became very abusive. I then left, but I learned afterwards that he was a pauper being transferred from one workhouse to another, and that, on my exposing him, he had narrowly escaped being put by the bystanders under the pipe used for watering the engines.

Malingering in Eye Disease

is a little difficult to detect, but I have not yet found the device fail of juggling with plus and minus lenses. One feels almost sorry for the pretender, who with these so easily betrays himself.

When complete amblyopia is feigned in one eye it can be detected in two ways: (1) by a prism, and (2) by the ordinary test for an alternating squint. The apparatus, as you know, consists of a sheet of glass with the word "theory" on it, the letters being alternately red and green. Suppose that the allegation is that the right eye is blind. A spectacle frame is placed in front of the eyes, with a green glass in front of the left eye and a red in front of the right. Through the green lens he can read only the green "t-e-r," and through the red glass he can read "h-o-y." If, therefore, he says that the word is 'theory," he sees with both eyes. If he suspects, change the lenses so that the green shall be in front of the right eye and the red in front of the left, or vary the coloured glasses until he gives himself away.

Hernia.

There is a growing tendency among workmen to say they are unfit for work on account of hernia. With a perfectly fitting truss, however, anyone can do manual labour. If, however, I were an employer of labour I should never employ anyone with a hernia, even though he wore a truss, for workmen are careless, and the day arrives when the truss does not fit. Strangulation may occur, and the employer is responsible. For the public service I always refuse at an entrance examination men with rupture whose work entails hard manual labour. I am always loth to recommend operations for the radical cure. Some of us, who are not operating surgeons, think there is a tendency on the part of these gentlemen to talk too lightly of the risks of operations on the abdomen. I asked a consulting surgeon recently what his mortality was for an operation which he has claimed to have discovered, and his characteristic and amusing reply was, "Less than nothing." Do not forget that 15 to 20 per cent. of radical cures in adult life are failures.

I often see the depression and discolouration of skin left by the pressure of a truss on candidates, who somewhat craftily leave the truss off the day they present themselves for medical examination,

Nervous Diseases.

In medico-legal matters I think most mistakes are made with nervous diseases. The difficulty in settling what is functional and what is organic seems to scare most men, and I do not wonder. The neuronimetic is a foeman worthy of your steel, and I wish you joy of him.

When called upon in a medico-legal case to distinguish him from a case of locomotor-ataxia, from the incipient stages of general paralysis of the insane, or from a chronic alcoholic, you will be in need of all the sympathy your friends can spare.

Satisfy yourself by the ordinary means at your disposal whether actual objective signs do, or do not exist, and that no serious trophic changes, *which cannot be accounted for by mere disuse of parts*, have taken place.

Superficial and deep reflexes should be examined. Slight alterations in these, however, are not of the importance generally attached to them in the law courts.

Remember, something which may easily be mistaken for Babinski's sign is found in the neurotic. It is sometimes a little difficult to elicit. Bear in mind that plantar reflexes are absent when the foot is very cold or moist. In the various palsies said to be the result of accidents, test for the reaction of degeneration. Take each case as a whole. The more you know of the nervous system and its diseases, the less worrying do these cases become. For instance, fine fibrillar tremors are generally genuine, coarse trembling is almost always assumed.

The difference between functional and organic disease is exceedingly difficult to tell, and the difficulty, in view of the increasing volume of litigation and the stress of modern life, is likely to increase. In your anxiety not to overlook anything, beware of exaggerating trifling abnormalities, which by no means necessarily mean disease.

Knee Jerks.

The man who walks into your consulting room whose knee jerks are entirely absent has organic nerve disease, generally either locomotor ataxia or neuritis; but it is a very difficult thing to say positively that knee jerk is absent: it is sometimes very difficult to elicit. The patellar reflex can be said to be absent only when a hand placed on the quadriceps extensor femoris fails to detect the slightest contraction of the muscular fibres. Do not forget the method of reinforcement. A patellar reflex, however feeble, if constant must not be looked upon as pathological.

When locomotor ataxia attacks the upper part of the spinal cord, difficulty in walking and the abolition of the knee jerk may be long delayed.

Remember that a very active knee jerk, in the absence of other pathological symptoms, is *not* an indication of disease.

Inequality of the Pupils.

Although this is suggestive of general paralysis of the insane, do not forget that it occurs in neurasthenia, and is sometimes, although rarely, found in perfect health. Pupillary irregularities are very important, but do not mistake the synechiæ of an old iritis for the irregularities of general paralysis. There is sometimes difficulty in ascertaining definitely the activity or otherwise of the pupil reflex, and I find there is no better method than to darken the room and suddenly flash a light on the eyes.

Nystagmus

ought to make you think of Disseminated Sclerosis, but, as Bradshaw points out, much care is required in determining what is a true nystagmus. Slight oscillations of the globe, especially in extreme voluntary deviation, may be merely due to fatigue, or may be part of a general muscular tremor. The Argyll-Robertson pupil is, as you know, very common in locomotor ataxia and general paralysis of the insane, but never be so misguided as to make a diagnosis upon this alone.

Feigned Loss of Muscular Power.

Experience will soon teach you pitfalls for the malingerer. It is difficult to detect alleged loss of power in muscle, as for instance, when a man says he has lost power of grasping. Something, however, may be gained by baring his forearm and watching whether he really brings his flexors into use. Not infrequently he brings his extensors into play at the same time. Powerful contraction of the flexors of the forearm is generally accompanied by contraction of the triceps: note if this muscle is brought into play. You will often be able to discover feigned loss of muscular power by first estimating its amount in contraction, and then inducing the patient to oppose contraction. For example, let us suppose that it is alleged that the power of flexion of the elbow is very feeble. Judge first of his power of bending, and then, when the elbow *is* flexed, tell the patient to resist your straightening it, and you will be surprised sometimes at the amount of strength which he exerts, and yet he is using the same set of muscles! His idea is that he should oppose everything.

Deafness.

Deafness is always difficult to detect if feigned. Remember that it very rarely follows head injuries of the minor type.

Recently I examined a case in a solicitor's office in the presence of the man's own doctor. There had been an injury to the head, and his medical adviser said that he had become deaf since the accident. On examining the tympanum with the otoscope, which should always be taken when examining medico-legal cases, I pointed out that his ears were filled with wax. "Yes," said the doctor, "I know it"!

Deafness after an accident is not likely to be unilateral. You can always detect the slow, monotonous voice of the man who has been deaf for some time. The ground-glass appearance of the tympanum is significant.

A man who was making a large claim for damages for alleged deafness brought about by an accident was examined by me in consultation with three other doctors. He was particularly artful, and said that he could not hear, insisting that his left ear was deaf, and no amount of coaxing could induce him to hear on that side. I filled both his ears with Hawksley's clay, and removed it from first one ear and then the other, at the same time engaging him in conversation. When next I replaced it in both ears it irritated him, and he became very angry. I then quickly removed the clay from the right ear, leaving only the left, or deaf, ear free. He carried on the conversation, and replied to a question quite easily.

Deafness may be detected by the following method *(described)*.

Traumatic Neurasthenia

depends to a great extent, if not entirely, on what Savage calls "a faulty association of ideas."

An accident is so unexpected an event that it necessarily produces a mental commotion in which the sensations play a prominent part, and all such sensations naturally leave a strong impression on the mind. Now, memory consists in the reconstruction of impressions.

If in neurasthenia following accidents we only had to deal with the reproduction of the morbid impressions stored up in memory, time, the great healer of all things human, would adjust the balance, and accident cases, if fairly met, would not be difficult to settle. But this is not all.

Certain sensations take their origin in the brain itself, independently of external stimuli. The brain cells give them birth, as, for instance, the dreams of the healthy man or the illusions of the delirious. These are called subjective sensations, and their future,

when they follow an accident, depends upon the nature of the influences which are brought to bear upon them from without.

What, then, are the influences usually surrounding a working man, let us say, who is a claimant for damages for personal injury? Visions of what to him are heavy damages are dangled before him by his solicitor or the tout. His memory is refreshed by the repeated rehearsal of the minutest details of the accident. Money, which can often be but ill spared, is extracted in small and repeated amounts in order to provide the sinews of war, and these demands have to be met not infrequently by pledging the household furniture. The doctor calls daily, examinations and re-examinations are conducted by doctors (expert in giving evidence in such cases) sent by the solicitor. And, lastly, the case is made to last many months, sometimes almost a year, during which time, of course, the claimant must not work.

Could anything be better calculated to produce a profound mental impression upon a man in needy circumstances? Would it be possible to prescribe any course of treatment more likely to foster introspection and subjective sensations? The truth is, that by the time the trial is reached one has to deal, not with introspection or traumatic neurasthenia, but with an obsession.

To my mind the working-man is unkindly treated. If his personal medical attendant had but the pluck, he could, at an early stage, profoundly influence this faulty association of ideas by refusing to be a party to exaggeration and self-examination. If a firm stand is not taken early it is useless to take it later. Very soon the claimant becomes possessed of one dominant idea, so that his every thought and action centre round the idea of damages. When this stage is reached, his only salvation lies either in a settlement or the trial of the action.

II.—THE MEDICAL MAN AS WITNESS.

If I may I would like to give some hints as to one's conduct in the witness-box.

When giving evidence one must be exceedingly careful not only of the exact words one uses, but of the shades of meaning of different words. Whilst trying to impress the jury with certain facts, remember that they, and the counsel on both sides, really know very little about medical matters. How can counsel, however smart, and however careful his coaching may have been, really know anything worth knowing, of say, the pathology of an impacted fracture of the surgical neck of the humerus? Some idea of anatomy, as it is understood in the law courts, may be gathered from the evidence of a plaintiff in a case recently tried in a county court in the North of

London. The plaintiff was suing a dentist for damages for the loss of a tooth, the dentist having taken out the wrong one. The plaintiff further alleged that serious hæmorrhage followed; in fact he said, "My mouth filled so quickly, and I was losing so much blood, that at last I dare not expectorate any more."

Another instance will make my meaning clear:—

A claim was brought against the London County Council by a man who was slowly dying from aortic regurgitation. The allegation was that he had sniffed an evil smell in one of the main sewers, and that the heart trouble was the result. The hypertrophy of the left ventricle was obviously of over a year's duration (this was admitted by the man's own doctor), whereas the enteritis, it was allowed, had undoubtedly occurred only some six months before the trial. On cross-examination, the counsel asked me whether the heart *trouble* was "single or double." I replied that I did not understand the question, and asked what he meant. It was quite obvious that he himself did not know what he meant, and that he had been very loosely instructed. He merely repeated the question, and insisted upon an answer. My answer was that it was "single." Now, had I declined to answer, the effect would not have been good; whereas, since something "double" had been suggested, it was just as well to cut it down to "single," especially as neither of us knew what he was talking about.

You must make up your mind definitely *before you go into the witness box* what your view of the case really is; how much you may concede, while conserving the interests of justice. Then, be strong; let no amount of bullying, no amount of insinuation, no amount of subtle craftiness, make you swerve from your fixed view of what you know to be the facts. When you have deliberately made a statement which you know to be true, or given an opinion which you honestly believe to be correct, do not allow counsel in cross-examination to worry you into contradicting yourselves.

In speaking of the giving of evidence by medical men, it is to be remembered that most frequently they are called on, not like ordinary witnesses, to speak of occurrences which they have actually seen, or of facts within their personal knowledge, but to act as expert or scientific witnesses, explaining how certain conditions or symptoms may have been caused, and pronouncing upon the actual existence or otherwise of latent ailments.

In the performance of this delicate task the medical witness may, if he is not wary, become an easy prey to the, let us say, over-zealous cross-examiner, who is ready with some such question as "Doctor, you told us you thought so and so." "Now, doctor, tell us why you think

so." This is often the beginning of an unhappy time for the witness, who, we must admit, should have some fair reason to give.

Unfortunately for men in the witness-box they cannot always act upon the advice of the worthy Scotch Judge, who said: "Always give your judgment but not your reason. Your judgment may be all right, and your reason all wrong."

A well-known teacher on Medico-Legal work used to say: "Gentlemen, never tell lies, *never* tell lies. Gentlemen, never tell lies in the witness-box, no, *never* tell lies in the witness-box; but, gentlemen, if you ever *do* tell a lie in the witness-box, *stick to it.*" This, of course, was one of our great teacher's many jokes, but it has beneath it a suggestion of the utmost importance when considering one's conduct in the witness-box.

Never Use Technical Terms in the Witness-Box.

This is a particularly common weakness of our profession. I can well understand it. When a man thinks in technical language for half a life-time it is difficult, especially when he is giving evidence, to Anglicise every classical term. I pride myself on never using technical terms in the witness-box, and was rather surprised the other day by a Judge saying to me: "Doctor, don't you think you might use the word 'knee-cap' instead of patella?" (I think he only wanted to demonstrate his knowledge of the word "patella"!) I had my own back, however, almost at once, for, on describing an injury as a bruise, I explained they had already heard it described as "ecchymosis" by a doctor on the other side. I looked up slily at the Judge, and caught him casting a sly glance at the witness-box!

Never Make Unnecessary Admissions in the Witness-Box.

It occasionally happens that a medical witness is too frank, and is apt to become voluble. The following incident happened to one of the best expert witnesses of our time:—He had spun so many theories that cross-examining counsel had no difficulty in getting him into a tangle, which advantage he made use of by giving the witness the choice of two horns of a dilemma. As the latter could not safely choose either, he had to make the admission, "You have got me in a corner this time." "Yes," said the examining counsel, "and I will leave you in the corner. Stand down."

On the other hand, while exercising due restraint, a witness should give his evidence in a distinct straight-forward manner. This is due to the Court and to the case in hand. Some years ago a Highland Scottish shepherd was giving evidence in a criminal trial,

and the prosecutor was doing his best, with little success, to extract something definite from him. The worthy rustic's attitude was non-committal in a high degree; at length, the Judge, addressing the prosecuting counsel, said: "Mr. ——, do try to get this man to answer 'Yes' or 'No'—*that is if you can get him to understand so fine a distinction!*" But we should, for our own safety, remember that there are many questions which cannot, and should not, be answered by "Yes" or "No." The well-known illustration is of the brow-beating counsel affecting great indignation and shouting: "Now, sir, is it true that you have ceased to beat your mother-in-law?" A question which is a good sample of an unjust assumption even among moderately well-behaved people!

Do not Assume any Knowledge of the Law.

It is always amusing to hear the laity talking of medical matters as if they thoroughly understood them. It is dangerous for a doctor to attempt to pose in any way as a lawyer.

Some years ago my driver was charged at Marylebone Police Court for exceeding the legal limit in Hyde Park. I undertook his defence. I had carefully prepared my speech, and thought I had somewhat mollified the judge. Encouraged by apparent success, on the spur of the moment I added an extempore statement to the effect that I had "just been saying to the chauffeur the previous day how fortunate we had been with regard to the police!" "Forty shillings and costs," said the magistrate; and so ended my career as a lawyer.

Now I want to refer to a very delicate point in medical etiquette, which I shall introduce by calling your attention to the following case:—

I received notice to examine a girl who was said to be suffering from an injury to her right arm and left malar bone. With the request to examine came a letter which the solicitor had received from the doctor, which ran as follows:

"Dear Sir,—Miss X has suffered from injury to her face and right arm. She is suffering from traumatic neurasthenia, and is likely to be ill some time. I enclose my account for £6.—Yours truly, —"

I called without giving notice, and found the young lady in good health, certainly not suffering from any injury. As she was palpably malingering I let her clearly understand my view of the situation, and left ignoring, and, I admit, intentionally ignoring, her doctor, who happened to be her master, whose lock-up surgery she attended to as care-taker. The inevitable followed, a very indignant letter from the doctor to the solicitor complaining of a breach of etiquette.

Now some may not agree with me, but my position is this. Whilst I recognise almost every day the obligation that is cast upon me to meet my professional brethren, I believe there are very exceptional circumstances where it is my duty to those whom I represent not to court their presence. This statement, addressed to a medical audience, is a bold one to make, for I know it is heresy, but discussion is to follow this paper, and I shall have your views presently.

His Honour Judge Mulligan, K.C., at Swaffham County Court, in the case of Purse *v.* Hayward, made the following defence of Dr. Watson, who had seen a patient without a consultation :

"Now, when a second doctor is called in by a patient or his friends, to advise or to treat that patient, I can well understand that the first doctor should be informed and meet the second (except in urgent cases). Such a rule would, if I may say so with respect, seem just in principle, and beneficial in practice. But I do not see how that principle can apply when a strange doctor is going, not for the purpose of advising or treating the injured, but to make an examination on behalf of a third person. On the contrary, if a doctor be requested by a master to ascertain the condition of an injured workman with a view to resist a claim for compensation, it may be the duty of that doctor to make a surprise visit at a reasonable time. A doctor so requested must exercise his discretion, with which this Court is loth to interfere. I find no ground for any complaint against Dr. Watson."

III.—THE MEDICAL MAN AS REFEREE.

An injured workman who has given notice of an accident or made a claim against his employer under the Workmen's Compensation Act, 1906, *must*, if asked by the employer, submit himself to medical examination by a duly qualified medical practitioner nominated and paid by the employer. The employer, however, is not called upon to pay any fee to the workman's doctor if he attends at the examination. The reason of this is obvious. It is only fair that the employer should have an opportunity of having a report from a medical man as to the injury. Therefore the Act compels the workman to submit himself to an examination.

If the workman chooses to have his own medical man present at the examination, well and good, but the employer should not be burdened with the expenses of the fee of the man's doctor.

Under the common law and the Employers' Liability Act a workman is not obliged to submit to a medical examination, and, therefore, if the employer requires an examination he must be prepared to pay the workman's doctor for his attendance during the examination if this is demanded.

Medical examinations under the Workmen's Compensation Act may be demanded from time to time so long as weekly payments are being made by the employer. The first examination is not compulsory until after the first month from the date of the first weekly payment. He may be examined once a week during the second month, and once a month during the fourth, fifth, and sixth months, and once every two months thereafter. If the workman refuses to submit himself to medical examination, or in any way obstructs the examination, his right to compensation or to take proceedings is suspended until the examination has taken place in proper form, and the employer is not liable for any weekly payment during the period of suspension.

Medical referees are appointed by the Secretary of State, and must not, of course, act in that capacity both for the employer and workman in the same case.

He may have appellate duties to perform with reference to industrial diseases. If a surgeon under the Factory Act has granted or refused to grant a certificate to the effect that a workman is suffering from one of the industrial diseases named in the Act, and either the employer or the workman feels aggrieved, the matter is to be referred to a medical referee.

Any committee or arbitrator may submit to a medical referee for report on any matter arising out of an arbitration.

Medical referees may also be asked to examine workmen in receipt of sick pay who are about to reside abroad.

The Workmen's Compensation Acts of 1900 and 1906 greatly increased the opportunities of utilising medical expert evidence, either by referring difficult medical cases to a medical referee, or by the judge calling upon the medical referee to sit with him in special cases.

This part of the Act was a dead letter before the recent Act was passed, and, judging from the number of times I have had cases referred to me by the county court judges to whose courts I am attached, it is practically a dead letter still.

You will agree with me that when a county court judge goes the length of deciding, as was recently done, that general paralysis of the insane can be produced by a flesh wound, the time has surely come when the practice of the Admiralty Court might be followed with benefit to litigants, and a medical assessor be nominated to assist in difficult cases.

An assessor has, as you are aware, long been in requisition in admiralty cases. The evident advantages to be gained by judges employing medical assessors during the trial of a difficult medical case is not sufficiently realised by the Bench; there is little doubt such an arrangement would often very materially aid the ends

of justice. The judge can, of course, on his own initiative, refer the matter to a medical referee for report, but he very seldom does so on his own initiative. If, however, *both* parties agree that the case shall be referred to the medical referee, the judge *must* so refer it. It is comforting to know that the medical referee's verdict is final.

We have seen that unscrupulous lawyers, with the assistance of degenerate doctors, thrive upon the working classes by unduly prolonging cases where damages are claimed. These cases turn in my experience very largely upon the question of the fitness or unfitness for work of the employee at a given date. It is obviously in the interest of the speculative lawyer and his parasite the doctor to prove that their unfortunate victim should be represented as being incapacitated for as long a period as possible.

As one of a legal family I wish to say that I have the greatest respect for the legal profession, many of whom are my best friends, but I do not envy the man who has not a loathing for the so-called "Poor man's Lawyer" who runs speculative actions, who suborns perjury, who employs false witnesses ("runners" they are called) and who, after "debasing the moral currency" of all concerned, robs the poor tool of the larger part of the damages obtained.

A working man threatened an action against his employer, claiming damages for personal injury. The matter was settled out of court, the employer agreeing to pay the sum of money. This he paid to the workman's solicitor, who actually attempted to deduct one-fourth of the whole amount as his charge. The Court, on being applied to, ordered the solicitor's bill to be properly taxed.

I was charged recently with "spoiling sport." If this is sport I am indeed no sportsman. Pigeon shooting is manliness personified when compared with a miserable business of this sort. Caught in the meshes of this unsavoury gang, I see scores of healthy citizens whose usefulness to the State is abruptly cut short from the day they enter the spider's parlour. The extent of their moral obliquity is evidenced when on oath and in the witness-box. I am now engaged in a case where a man met a year ago with an absolutely trifling injury, whose recovery should, under no circumstances, have been delayed more than six weeks at the outside, and who now has his action yet untried—needless to say he has done no work since the accident! What is the remedy? It is simplicity itself. Alter one word in the Act and all is changed. The Act provides that a case may be referred to a Home Office medical referee if *both* parties agree. I suggest that the Act should read, as originally drafted in the Bill, that if *either* party demand it, the case, *i.e.*, *the*

medical part of the case only, shall go forthwith to the official medical referee. If the official medical referees were all judicially-minded men of the consultant type, there could be no possible objection to this suggested alteration.

The best proof that something is radically wrong with this section of the Act came from a most unexpected quarter. A lawyer—one of the fairest and most upright men I know—told me that when "the other side" suggested that a case should be referred to the official medical referee, he always objected, as he is entitled to do under the provision of the Act, for, as he explained, he felt sure his opponent had a good case!

The Act, a most beneficent one in most respects as it now stands, is, with this palpable flaw, setting class against class, and unintentionally encouraging litigation of a reprehensible kind.

APPENDIX.

Introduction.

By the common law it is incumbent upon everyone so to regulate his affairs and those of his servants, so that injury may not result to others. Failure to do this constitutes what is known in law as "negligence," and compensation may be claimed by the injured person.

It is difficult to define exactly what amounts to "negligence," but the failure to exercise the reasonable care and foresight which a man of ordinary prudence would exercise under any given circumstances may be accepted as a fair definition. For instance, a builder would not be considered "negligent" who left steps or ladders freely about his builder's yard where workmen are employed; but if, whilst repairing a school, he left these in the playground, and the school children played with them and injured themselves, he would be "negligent" in the legal sense.

The question whether there has been "negligence" is, generally speaking, a question of fact, as opposed to a question of law. There is no appeal in law from a question of fact except in very exceptional circumstances, as, for instance, when a jury has obviously perversely gone astray. Suppose, in the case just mentioned, a jury found that no steps or ladders were, in fact, present in the playground, although

several witnesses stated they had seen them there on the day of the accident, and there was no evidence to the contrary, an appeal would be allowed, although in form it would be an order for a new trial.

Employers' Liability Act, 1880.

Prior to 1880, if a workman was injured by a fellow workman whilst both were serving the same master, the master was not liable. The idea was that the workmen must take the risks of the particular work that they are engaged in. This was known as "Common Employment."

As the law then stood, if, let us say, a crane-man allowed a skiff to fall on perhaps six of his fellow workmen, no compensation could be recovered from the employer by the injured workmen; but if *death* resulted, the relatives of the deceased could recover under the Fatal Accidents Act of 1846, better known as Lord Campbell's Act.

In 1880 the Employers' Liability Act was passed. Its provisions are somewhat complicated, but, generally speaking, the liability of the employer to his workmen was considerably extended. For instance, the employer became liable if it could be proved that there was at the time of the accident any defect in the works or plant, provided the defect was caused by negligence on the part of the employer or his servants, or if the workman was injured through obeying orders. The workman cannot, of course, recover if he knew of, and did not report a defect or negligence which eventually caused him injury.

The Act of 1880, however, only embraces a limited number of workmen, such as railway servants, labourers, journeymen, motor-omnibus drivers, artificers, handicraftsmen, miners, and others engaged in *manual* labour. (It does *not*, however, include seamen or workmen in the service of the Crown.) It has been held that omnibus conductors, horse-tram drivers, ordinary shop assistants and nurses are *not* within the terms of the Act as they are not engaged in manual labour.

The maximum amount of compensation that can be awarded under this Act is limited to three years' earnings. It is open to the court to include medical and other expenses, loss of wages, and a sum for pain and suffering *within* the above limit.

Notice of the accident must be given in writing to the employer within six weeks, and the omission to do this is fatal to a claim, as also is the omission to take proceedings within six months.

Workmen's Compensation Act, 1906.

In 1897 an Act called the Workmen's Compensation Act was

passed. Its object was to compensate certain workmen for injuries received whilst on duty. Its scope was very limited, and affected comparatively few trades, such as those carried on in factories, workshops, engineering works, buildings in course of erection or demolition, and so forth. Six million workpeople, however, came within its scope.

The limited application of the Act created many difficulties, and much litigation as to whether the employee was, or was not, a workman within the meaning of the Act, or whether the circumstances brought the case within it. A large number of cases were taken to the House of Lords.

In 1900 an Amending Act was passed extending the benefits of the 1897 Act to certain workmen engaged in agriculture. One million workpeople were added by this Act.

In 1906 an Act repealing those of 1897 and 1900 was passed, which extended the liability of the employer practically to all cases where the relationship of master and servant existed, subject to certain limitations as to the amount of wages received.

Everyone, whether he is engaged in manual labour or not, whose earnings do not exceed £250 a year, is entitled to compensation in the event of injury. Should he, however, be engaged in manual labour he can claim, although his earnings are over £250, but not otherwise. Assuming an annual income of less than £250 in any of the following, they would come under the Act, viz.: medical assistants, dispensers *locum tenens*, members of hospital staffs, curates, lay readers, secretaries, typists, clerks, nurses, gardeners, domestic servants, and last, but not least, the German waiter—the hope of the pettifogging lawyer.

All workmen employed by or under the Crown, such as postmen, men employed at the Arsenal or Government shipyards, come under the Act. No voluntary worker can claim under this Act. For instance, a window cleaner who was a regular employee of his master sent as his substitute a relative to do his work for the day. An accident befel the latter, but, as he was not directly engaged, but had volunteered to take the regular employee's place, the employer was held to be *not* liable.

Anyone employed *casually* for purposes *other than the employer's trade or business* does not come within the Act. For instance, if I employ a gardener who was out of work to lop off some overhanging branches of a tree in my garden, and he injure himself in doing it, he cannot claim compensation, but if I give him instructions to call regularly every Saturday morning and weed the garden, the Courts hold that this is not casual employment, and, in the event of an accident, the man would come under the Act. Remember, that to render yourself liable you yourself must be his employer, and if you

contract with a florist to send a man regularly once or twice a week to keep your garden in order, the florist, and not you, is liable, as the man is not in your service, and is neither engaged nor can be dismissed by you.

Workpeople who perform their duties in their own homes (such, for instance, as tailor women, shirt makers, etc.) do not come under the Act, for the obvious reason that their employer has no control over their home arrangements. Members of an employer's family living at home are excluded from the benefit of this Act.

For obvious reasons, persons in the naval and military service of the Crown, and policemen do not receive compensation under this Act. But the Act brings within its scope large bodies of employees not formerly entitled to compensation for accident, indeed another six million are added. As the former Acts benefited seven million in all, it is clear that a total of thirteen million come within the scope of the Act, the largest sections of those added by the latest Act being represented by domestic servants, clerks, shop assistants, and seamen engaged in the merchant service.

An important addition to the employer's liability is that he is now responsible for anyone he may employ in a *casual* way *for the purpose of his trade or business.*

I.—Casual Employment: What is It?

It has been decided that if a man is employed at more or less regular intervals, such as half a day, or a day each week or fortnight, his case would come within the Act. The element of chance is the central idea. The meaning of "casual" employment may be taken as "depending on chance," "not to be calculated upon," "uncertain," "precarious," "one who does occasional or odd jobs and who has no fixed or regular employment." In order that a workman can claim compensation under this Act (except in certain diseases mentioned later) the injury must be an accident and "arise out of, and in the course of, his employment." A casual worker so employed cannot claim *unless* he is employed at the time of the accident in the employer's trade or business. For instance—take the case I have previously mentioned—I might employ a gardener casually, but, as I am not a professional florist, he would not be employed for the purpose of my trade or business, and, although he satisfies one condition of the Act, viz., that he is casual, he does not satisfy the other, viz., he is not employed for the purposes of my trade or business. Again, I might engage temporarily a professional cook, and if the kitchen boiler exploded and seriously injured her I should not be responsible, for she is not engaged for the purpose of my trade or

business. Had I been a pastry cook I would have been liable as she would then have been engaged for the purpose of my trade or business. It makes no difference whether the employer or his servants were, or were not, negligent, but if it can be proved that the injury is attributable to the *serious and wilful* misconduct of the workman, he cannot recover, but this reservation does not apply if the accident results in death, or serious and permanent disablement, in which case the employer *is* responsible.

It seems a little hard that an employer should have to pay compensation to a workman who has injured himself whilst semi-intoxicated. The theory in law is that it is the employer's duty to see that no drunken man is employed. Delirium tremens often follows an accident. No such case has yet been decided, but in all probability the employer would be liable. Here, again, I take it, the theory is that the employer should not be employing any one sailing so near the wind.

In Germany employers form a Trade Association for insuring their employees. The workmen cannot claim upon the employers' fund until he has had sick pay from his own insurance fund for thirteen weeks, therefore he gets relief from sick funds controlled almost entirely by his fellow workmen, and they may safely be trusted to look after each other.

In Great Britain a workman gets compensation from his employer if ill for more than one week, and is not infrequently in receipt, during his incapacity, of an income from one or more clubs. I see many men who are considerably better off when ill than when working.

It is to be noted that for misconduct to disqualify a workman, the words of the Act state that it must be *serious* AND *wilful*, not mark you, serious *or* wilful. The House of Lords has decided that there must be a combination of both. For instance, a man may be drunk whilst in charge of a signal box. Is he likely to admit that he was *wilfully* drunk ?

II.—When is a Man an Employee ?

Now, the phrase "arising out of, and in course of employment," means that the risk must be incidental to the work. For instance, a boy, employed to make up balls of clay to hand to a woman to place in a moulding machine, in her absence got under the machine to clean it, and was injured. In this case it was decided that the injury did not "arise out of, and in course of his employment," it being no part of his duty to clean the machine. In another case a workman, whilst engaged in some horse-play with other workmen on the premises, met with an injury. The case was held not to come within the Act

as the injury could *not* be said to have arisen through anything incidental to the work.

An important case came before the House of Lords last month (Reed *v.* Great Western Railway Company). An engine driver left his engine (which was taking in water) to walk across the line towards a friend to receive from him a promised book. In crossing the line he was knocked down and killed. The House of Lords decided that at the time he was knocked down he had quitted his employment, and the Company were therefore *not* liable. There was no relationship of master and servant at the moment.

A master is not liable for accidents befalling his servants whilst they are going to or returning from their work, except when on business for their master. For instance, suppose a workman was engaged from 8 a.m. to 6 p.m., the master's responsibility begins when the employee enters the employer's premises, and ends when he leaves them at night. But suppose his master tells him to leave at five on one special occasion, in order that he may deliver a letter at a distant address on his way home, then if an accident befals him whilst in the street on this duty, his master will be liable.

III.—Legal Procedure by Employees to Recover Compensation.

If a workman is injured, he can take proceedings under the common law, the Workmen's Compensation Act, or the Employers' Liability Act; but he can only bring an action under the last Act provided he alleges negligence of the employer or his servants, or that the works or plant were defective. He cannot recover under more than one of the foregoing for the same injury. If he proceeds under the common law or Employers' Liability Act *and fails*, he may follow it up by proceeding under the Workmen's Compensation Act provided he does so immediately. In other words, if he elects to have two strings to his bow, he *must first* bring proceedings under the Employers' Liability Act (or at common law) *and have failed* before he can proceed under the Workmen's Compensation Act. If he proceeds under the Compensation Act he cannot, generally speaking, then bring an action under the Employers' Liability Act or at common law.

If a workman is injured and takes proceedings under the Workmen's Compensation Act, provided the accident arose "out of and in the course of his employment," and was not due to his own *serious* and *wilful* misconduct, he is practically certain to get compensation: as before stated, no question of negligence arises under this Act. On the other hand, an action brought under the Employers' Liability Act

may, if successful, be the means of securing larger damages, in cases of comparatively slight injury, but he is by no means so sure of winning, as, under the Employers' Liability Act, he must prove negligence, or that the works or plant were defective. Under the Workmen's Compensation Act a workman receives only half his weekly earnings whilst totally incapacitated. The idea of the Act is to divide the loss occasioned to the workman between the employer and the workman. If, on the other hand, a workman recovers under the Employers' Liability Act or common law, he is entitled to full wages—that is to say, all the loss of wages that he sustains, his medical and other expenses, besides the sum for "pain and suffering," the phrase so dear to the heart of lawyers.

It is therefore obvious that from the workman's point of view the Employers' Liability Act (provided he is not totally incapacitated or partially disabled for a long period), affords a better opportunity of his securing substantial redress if the circumstances entitle the employee to claim under that Act. Should, however, he be totally incapacitated, he would be a very foolish man to bring a claim under the Employers' Liability Act, for, according to the Act, the maximum amount that can ever be awarded is the sum equal to his average earnings for three years, whereas under the Workmen's Compensation Act an employer has to pay the workman weekly compensation (if totally incapacitated) as long as he lives, or commute those payments.

Suppose an employee is working part time for two employers, and is in receipt of, say, ten shillings a week from A and seven shillings a week from B. He meets with an accident whilst working for B. His average weekly earnings would be considered to be not seven shillings but seventeen shillings. This, although hard on B, is just; for, of course, in consequence of an injury received whilst working for B, he is, as long as the disability lasts, unable to earn the ten shillings per week from A. The employer in whose employment the accident happened will have to compensate the employee on the basis of his total average weekly earnings, and *not* upon the wages received from the particular individual or body employing him at the moment.

This clause has an important bearing on public bodies, such as county councils or district councils, boards of guardians, or hospitals employing doctors, assistants, dispensers, and gardeners, etc., many of whom are only partially employed, and who are, therefore, at liberty to accept other work.

IV.—Amount of Compensation Under the Acts.

In the event of a workman being *totally incapacitated*, he is to

receive half wages, but in no case is this sum to exceed one pound a week. Therefore, although a man might be making two pounds ten shillings (£2 10s. 0d.) a week, one pound (£1 0s. 0d.) is the maximum amount that the employer would be called upon to pay. In *France* he is entitled to *two-thirds* of his wages; and in *Germany*, as already stated, his insurance entitles him to *full* wages for the first thirteen weeks.

According to the old Act a workman could not receive any compensation during the first two weeks of his illness. Under the present Act, if a workman is ill for one week, or less than a week, he gets nothing. For instance, *A* is ill one week, or less, and gets no compensation at all. If a workman is ill for more than one week, and less than two weeks, he receives half pay from the commencement of the second week only. *B*'s illness lasts, let us say, thirteen days, and he therefore receives half pay for six days only. If a workman is ill for two weeks, or longer, he is entitled to half pay from the very commencement of his illness. For instance, C is ill for three weeks, and is consequently paid for the whole three weeks—that is, dating from the beginning of his illness.

After the weekly payment has been continued for not less than six months, the employer may redeem his liability by payment to the workman of a lump sum, but the workman cannot force the employer to do so. The amount payable in respect of redemption in the case of permanent total incapacity is such as would purchase an immediate annuity—which annuity would be equal to 75 per cent. of the annual value of the weekly payment. For instance, suppose someone in your employ receiving two pounds a week is permanently incapacitated, he or she is entitled to one pound a week during his or her lifetime. If you believed the incapacity to be hopelessly permanent, at the end of six months you could apply to the court to allow you to redeem the weekly payment for a lump sum. To buy an annuity for a person aged 25, which would be equal to 75 per cent. of £52 a year, would cost over eight hundred pounds (£800). The following are examples:—

Workmen's Age.	Weekly Payment.	Amount to be paid for redemption.		
		Male.		Female.
20	£1	£888	...	£968
30	1	797	...	880
40	1	697	...	776
50	1	584	...	646
60	1	447	...	497

These are approximate.

Experience and statistics prove that workmen do, in fact, extend their incapacity well beyond the second week to secure compensation. If the Act had provided compensation from the first day, it would, of course, have included many short periods of one, two, three, and four days, but many men would have returned at the end of the first week instead of in the middle of the second, or even third week.

In the case of a minor earning less than one pound (£1 0s. 0d.) a week, the Act provides that, in the event of total incapacity, he shall receive full wages up to 10s. a week if his wages amounted to that sum. This provision is having a bad effect on youths in coal mining and other districts, many of whom are earning less than 10s. a week. They therefore receive full wages, and, as they not infrequently belong to sick clubs, their total earnings, when injured, are often considerably more than they receive when well. Nothing in my opinion increases malingering more than this. The fact that workmen receive compensation makes them careless. The number of accidents has considerably increased since the first Compensation Act was passed. In the case of *partial disability*, where, for instance, a man has injured his hand, but is perfectly capable of doing watchman's work, the weekly compensation is in no case to exceed the difference between the amount earned *before* the accident and that which he is earning, or able to earn, at a suitable employment *after* the accident.

V.—Dependents.

A man's dependents are the members of his family, his illegitimate children, and illegitimate grandchildren, and (if he were himself an illegitimate child) his parents and grandparents.

VI.—Dependency.

The fact that a workman in case of death leaves dependents does not in itself entitle them to compensation, for it must be shown that they were actually dependent, either wholly or partially, on his earnings. For instance, a man may, at the time of his death, have a wife or children, and have lived apart from them without contributing anything towards their support. In that case they would not be entitled to compensation; but if he were supporting, or even partially supporting, his children, or illegitimate children, they would be entitled to compensation. The mother of an illegitimate child would not be entitled to compensation, even if the father had been supporting her. Whilst a workman is receiving a weekly payment the whole question may at any time be reviewed by the county court judge, and an order may be made to increase, diminish, or end the weekly payment.

VII.—Death.

Let us now consider the scale of compensation laid down by the Act if a workman is killed, and leaves dependents wholly dependent upon his earnings: they are entitled to a sum equal to three years' earnings, but in no case is the sum to be less than £150, or more than £300. If, however, his dependents are only partially dependent on him, the sum is to be "reasonable and proportionate to the loss to such partial dependents," but, of course, not exceeding the maximum in the case of total dependency. On the other hand, if there are *no* dependents, the "reasonable" expenses of medical attendance and burial are to be paid, but these are not to exceed ten pounds (£10).

VIII.—Notice.

Notice of an accident, according to the Act, should be given to the employer as soon as possible after it happens, but its omission is not necessarily fatal to a claim. You will remember that under the Employers' Liability Act the omission to give notice is fatal to a claim.

IX.—Diseases Scheduled under the Act.

Trades in which lead, mercury, arsenic, and phosphorus, and other metals are used, are by their very nature conducive to definite forms of disease. A workman who, having been employed in any of these trades, is disabled, suspended from work, or dies, comes under the Act as if his disease were a personal injury and an accident "arising out of and in the course of his employment." If, however, a workman, when entering employment, wilfully or falsely states in writing that he has *not* suffered from any of above-mentioned diseases, he cannot recover. There is no clause in the Act, however, insisting upon a workman disclosing the fact to his employer of his having previously suffered from one of the above diseases. Only *in writing* he must not deny it, if he is in fact aware of it.

It is obvious that serious legal difficulties arise where a man, who, let us suppose, has worked in a phosphorus factory, is attacked by the very early symptoms (perhaps not discernible) of phosphorus poisoning. On changing his employer, but not his occupation, he becomes at last incapacitated through the action of the poison. For a case of this sort elaborate regulations are laid down in the Act for apportioning fairly the pecuniary liability between the two employers.

A workman may quite conscientiously sign a statement that he has not any of the above-enumerated diseases, in spite of the fact

that he is already suffering from the incipient stages quite unknown to him. The difficulties in this clause are therefore mostly medical.

The following diseases were scheduled under the Act :—

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

The Secretary of State has power to make orders for extending the list of diseases. After an enquiry, at which I had the honour of giving evidence, an order, dated the 22nd May, 1907, was issued and the following diseases were added :—

Description of Disease or Injury.	Description of Process.
Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.	Any process involving the use of a nitro- or amido-derivative of benzene, or its preparations or compounds.
Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
Poisoning by nickel carbonyl or its sequelæ.	Any process in which the nickel carbonyl gas is evolved.

Description of Disease or Injury.	Description of Process.
Poisoning by *Gonioma Kamassi* (African boxwood) or its sequelæ.	Any process in the manufacture of articles from *Gonioma Kamassi* (African boxwood).
Chrome ulceration or its sequelæ.	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
Eczematous ulceration of the skin, produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	———
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
Scrotal epithelioma (chimney sweeps' cancer).	Chimney-sweeping.
Nystagmus.	Mining.
Glanders.	Care of any equine animal suffering from glanders; handling the carcase of such animal.
Compressed air illness or its sequelæ.	Any process carried on in compressed air.
Subcutaneous cellulitis of the hand (beat hand).	Mining.
Subcutaneous cellulitis over the patella (miners' beat knee).	Mining.
Acute bursitis over the elbow (miners' beat elbow).	Mining.

Description of Disease or Injury.	Description of Process.
Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.
Arsenic poisoning or its sequelæ.	Handling of arsenic or its preparations or compounds.
Lead poisoning or its sequelæ.	Handling of lead or its preparations or compounds.

A further order of the Secretary of State, dated December 2nd, 1908, has just been issued and includes the following :—

Description of Disease or Injury.	Description of Process.
Cataract in glassworkers.	Processes in the manufacture of glass involving exposure to the glare of molten glass.
Telegraphists' cramp.	Use of telegraphic instruments.
Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	

Under the old Act a person contracting a disease in the course of employment to which the Act otherwise related could not recover compensation, as with the exception mentioned below the contraction of disease was not "an injury by accident."

In the well-known anthrax case which arose in 1905 (Brintons *v.* Turvey), however, a workman, who was engaged sorting wool, contracted disease, the bacillus anthracis entering his *eye*. The man subsequently died, and the House of Lords held that in the particular circumstances of that case it was "an accident causing injury" and that the dependents of the deceased workman were entitled to compensation.

This decision was much commented upon, and the principle was not applied in any other case of contraction of disease except in such

cases as red lead entering a wound, but this is somewhat different in principle.

In the case of Broderick *v.* the London County Council, which arose after the present Act came into force, the workman contracted enteritis through inhaling noxious gases whilst working in the sewers, the result of which was to accelerate long existing heart disease, thereby incapacitating him for work before he would otherwise have become incapable of working. The medical evidence was to the effect that enteritis was generally caused by some irritant entering the system, usually in the nature of a bacillus. The county court judge found that the contracting of enteritis was not an injury by accident; also that the presence of noxious gases in the atmosphere in which the workman was employed was incidental to the nature of the employment and involved a risk of poisoning by such gases; that it was not unexpected or unforeseen, but was a result which might be caused to anyone engaged in such work, and, therefore, made an award in favour of the Council. The workman appealed against the decision of the county court judge, and the day before the appeal came on for hearing the workman died. The hearing was therefore adjourned, and subsequently the proceedings were revived by the deceased workman's widow, and came before three judges of the Court of Appeal. The court unanimously dismissed the appeal without calling upon counsel for the Council to argue the matter, the ground of their decision being that it was not enough to say that the injury was caused by the employment, but that there must be the further element of accident, which was absent in this case. The Master of the Rolls pointed out that the House of Lords had laid it down that the doctrine as to the disease of anthrax was not to be extended to all cases of disease contracted by a workman during his employment.

An important case upon this point was heard at the Bow County Court in July last (Haylett *v.* Vigor). The deceased had worked for some years, as a painter, for contractors, and for three or four days in August, 1907, had worked for another person. In September symptoms of "plumbism" were observed, and on the 25th of that month he entered a hospital, but all traces of "plumbism" had before that date passed away. He died on October 2nd. The county court judge found that the immediate cause of death was granular kidney; that granular kidney is a sequela of lead poisoning, but is also a sequela of gout, of alcoholism, heart pressure, and other complaints; and that lead poisoning was not proved to have been the cause of the granular kidney or of the death, but that, on the other hand, the employers did not prove that it was not the cause of death, and awarded £260 compensation. This decision was appealed against, and the Court

held that the words "lead poisoning or its sequelæ" did not apply unless lead poisoning was either the proximate or ultimate cause of death. *It must be proved that death was a consequence of lead poisoning* in the particular case. Although it *was* proved that the workman died of granular kidney, that was not sufficient unless it was also proved that the death was caused by the work in which he was engaged.